

the supplemental payment shall be based on the classification of the resident.

(2) The per diem supplemental payment shall be payable as a lump sum for up to one year from the date of the transfer or to June 30, 1994, whichever period is the shorter, as long as the transferred person remains resident in the facility. Any advance payments for days during which the transferred person is not resident will be treated as overpayments and subject to refund by deductions from the provider's Medicaid payments.

(3) For transferred persons still resident in the receiving facility after June 30, 1994, the per diem supplemental payment will continue to be paid as long as the following criteria are satisfied:

(i) The transferred person continues to reside at the receiving facility.

(ii) The facility documents to the satisfaction of the Division of Licensing and Protection that the transferred resident continues to present significant behavior management problems by exhibiting behaviors that are significantly more challenging than those of the general nursing facility population.

(c) The transferred resident's current case-mix score in the Vermont State Hospital Nursing Facilities (as determined by the Division of Licensing and Protection before transfer) shall be assigned to the transferred resident for two quarters after the transfer and shall be used as the minimum score for that resident in the calculation of the facility's aggregate case-mix score. For subsequent quarters, the score shall be based on normal resident assessment procedures.

(d) To be eligible for a special transitional rate, the receiving facility must have in place a plan of care developed in conjunction with and approved by the Department of Developmental and Mental Health Services and the Division of Licensing and Protection.

## **17.2 Special Rates for Medicaid Eligible Furloughees of the Department of Corrections**

A special rate equal to 110 percent of a nursing facility's ordinary Medicaid rate shall be paid for care provided to Medicaid eligible furloughees of the Department of Corrections.

## **17.3 Quality Incentives**

Certain supplemental payments may be made to nursing facilities to be used for facility quality enhancements.

(a) Awards. Supplemental payments may be made to facilities that provide a superior quality of care in an efficient and effective manner. These payments will be based on:

(1) objective standards of quality, which may include resident satisfaction surveys, to be determined by the Department of Aging and Disabilities, and

(2) objective standards of cost efficiency determined by the Division.

(b) Innovative Pilot Projects. Supplemental payments may be made to facilities for all, or a portion, of the costs, approved by the Department of Aging and Disabilities, for creative and innovative pilot projects designed to improve and enhance residents' quality of life.

(1) In order to be eligible for supplemental payments under (b), the project must be suitable for replication in other facilities.

(2) Supplemental payments under (b) will not be available:

(i) to continue projects or programs already in place, or

(ii) to solve any issue of regulatory non-compliance.

(c) Supplemental Quality Incentive Payments.

(1) The supplemental payments may be made periodically from a quality incentive pool to certain nursing facilities whose

operations meet the standards established pursuant to this subsection.

(2) Supplemental payments will not be available under this subsection for any facility that does not participate in the statewide resident satisfaction survey program, when implemented.

(3) Supplemental payments shall be expended by the provider to enhance the quality of care provided in the facility. In determining the nature of these expenditures, the provider shall consult with the facility's Resident Council.

(d) The method of distribution of the quality incentive payments shall be subject of a notice of practices and procedures issued pursuant to subsection 1.8(d) of these rules.

#### 17.4 Wage Supplement

(a) Beginning with the state fiscal year 2000 until such time as all cost categories have been rebased on a base year no earlier than calendar year 2000, each facility shall receive a wage supplement paid from the net revenues appointed for the purpose by 33 V.S.A. §1956(b). The supplement shall be in addition to the total per diem rate as calculated pursuant to sections §§5-9, including the inflation factors in subsection §5.8. The wage supplement shall not be subject to the payment limits in subsections §§7.2(d), 7.3(d) and 7.4(d), but shall be subject to the aggregate upper payment limits in subsection §5.5(a).

(1) Each facility's annual wage supplement payment shall be calculated as the prorated share of the net revenues based on the ratio of its nursing wages, salaries and fringe benefits to the total of all nursing wages, salaries and fringe benefits paid by Vermont nursing homes participating in the Medicaid program, as reported on their 1997 Medicaid cost reports.

(2) The wage supplement payments shall be made in monthly installments.

(b) *Wage Expenditure Reporting.* Within 60 days after the end of each state fiscal year (or part thereof when applicable) during which wage supplement payments are made, each facility shall file on forms prescribed by the

Division a report of the wages, salaries, fringe benefits, and bonuses paid to employees during the state fiscal year or part thereof. The filing shall include a calculation of the wage expenditure carryforward which is the difference between subparagraphs (1) and (2):

(1) the facility's expenditures on wages, salaries and fringe benefits, less Christmas bonuses (except for expenditures on wages, salaries, fringe benefits, and bonuses of owners and the administrator) in the baseline period, which shall be the last quarter of calendar year 1998. These expenditures shall be adjusted for accruals and annualized.

(2) the facility's expenditures during the State fiscal year (or part thereof) on wages, salaries and fringe benefits, less Christmas bonuses (except for expenditures on wages, salaries, fringe benefits, and bonuses of owners and the administrator), adjusted for accruals.

(3) *Contract Workers.* The wages, salaries, fringe benefits, and Christmas bonuses of contractual workers shall be treated as follows:

(i) If a facility incurs no costs for contract staffing in the baseline period in dietary, laundry, housekeeping, or therapies, at such time as the facility converts all staffing in any of these categories exclusively to contractual workers, the facility may remove the salaries of that category from the baseline period or prorated part thereof. No contractual salaries shall be included in the expenditures for the state fiscal year.

(ii) If a facility incurs contract costs for contract staffing in the baseline period in laundry, dietary, or housekeeping, the facility may include the wages, salaries, fringe benefits, less Christmas bonuses of such workers in both the baseline and subsequent state fiscal years as though they were employees of the facility, provided that the amount of the wages, salaries, fringe benefits, and Christmas bonuses of such contract workers can be fully documented for both periods. No amount may be included for any other

contract costs, including but not limited to the costs of contractors' employees not actually working at the facility, overhead and profit.

(4) Wage expenditure reports shall be subject to the provisions of these rules relating to cost reports, except where such provisions are incompatible with the specific requirements of this subsection.

(c) Final Calculation of Total Wage Supplement. At such time as all cost categories are rebased on a base year no earlier than 2000, wage supplement payments shall cease. The total amount of each facility's wage supplement shall be the lesser of the cumulative total of the facility's annual wage expenditure carryforwards (but not less than zero) or the cumulative total of its wage supplement payments. In making this comparison wage supplement payments and the wage expenditure carry-forward for part of a fiscal year shall be calculated proportionately.

(d) Overpayment. To the extent that a facility's cumulative total of the facility's annual wage expenditure carryforward is lower than a facility's cumulative total of its wage supplement payments, the difference shall be deemed a Medicaid overpayment and shall be recouped pursuant to subsection §5.2(b)(7) to a maximum of the cumulative total of its wage supplement payments.

#### **17.5 Retroactive Payments to State Nursing Facilities**

(a) Notwithstanding any other provision of these rules, for the period from May 1, 1999 through June 30, 2000, or such other later date as may be provided by statute, payment rates for state nursing facilities shall be determined retrospectively by the Division based on the reasonable and necessary costs of providing those services.

(b) No less than 90 days before the beginning of the state fiscal year, a state nursing facility shall file with the Division in a form acceptable to the Director, a proposed budget for that fiscal year. The Division shall review this filing for reasonableness and shall determine an approved budget which shall be

the basis for the facility's interim rates for that fiscal year.

(c) After reviewing the facility's cost report, the Division shall set a final rate for the fiscal year based on the facility's allowable costs. The Division may limit allowable costs to those in the approved budget.

(d) At no time shall the final rates paid to State nursing facilities exceed in aggregate the upper limits established in 42 C.F.R. §447.272.

#### **17.6 [Repealed]**

#### **17.7 Application of Rule**

(a) Amended provisions of this rule shall apply to:

(1) all cost reports draft findings issued after the effective date of the most recent amendment, and

(2) all rates set after the effective date of the most recent amendment.

(b) With respect to any administrative proceeding pending on the effective date of the most recent amendment the Director or the Secretary may apply any provision of such prior rules where the failure to do so would work an injustice or substantial inconvenience.